IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION Nos.19044 of 2000 and 2624 of 2001

Between:

Ch.Sivarama Raju S/o.Sivaramaraju
R/o.Yendagandi Village, Undi Mandal,
West Godavari District

..... PETITIONER

AND

1.Government of Andhra Pradesh,
rep.by its Secretary Irrigation Department,
Secretariat, Hyderabad.
2.Chief Engineer, Irrigation Department,

Erramanzil, Hyderabad.
3.Superintending Engineer, Irrigation Circle,

Eluru, West Godavari District.

4.Executive Engineer, Irrigation Department,

Settipet, Nidadavole Mandal,
West Godavari District.
5.Superintending Engineer (Constructions),
Irrigation Department, Dowleiswaram,
East Godavari District.
6.Executive Engineer (Constructions),
Irrigation Department, Tadepalligudem,
West Godavari District.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction declaring the action of the respondents in constructing a new Aqueduct at Nandamuru Village, West Godavari District with seven sluices with a higher discharge capacity of about 22,000 cusecs of Yerrakalva water in the place of existing Aqueduct with lesser capacity of 8000 cusecs leading to the damage of crops in several lakhs of acres of land in the down delta area as illegal and arbitrary.

Counsel for the Petitioner: Mr.V.V.L.N.SARMA

Counsel for the Respondents: G.P. FOR IRRIGATION &

COMMAND AREA DEVEVELOPMENT

WRIT PETITION No. 2624 of 2001

Between:

Rastra Rythu Karyacharana Samithi Bheemavaram,

a society registered under the Societies Registration Act XXI of 1860, under Regn.No.280/1998, rep. by its President Alluri Satyanarayana Raju, S/o.Sitaramaraju, Age: 60 yrs, R/o.Lankalakoderu Village, Palakollu Mandal, West Godavari District.

..... PETITIONER

AND

1.The Govt. of A.P. rep. by its Secretary,
Irrigation Department, Secretariat, Hyderabad.
2.The Chief Engineer, Irrigation Department,

Erramanzil, Hyderabad.
3.The Superintending Engineer,
Irrigation Circle, Eluru, West Godavari District - 534 001.
4.The Superintending Engineer (Constructions),
Irrigation Department, Dowleiswaram,
West Godavari District -533 125.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus, declaring that the proposed construction of the new aqueduct near Nandamuru for replacing the existing aqueduct with more sluices and more discharge capacity of Errakaluva Water into Yenamaduru drain than the capacity of the existing aqueduct, without obtaining the Expert Report constituted specifically for

the purpose in G.O.Ms.No.786, I&CAD Dept., dt.22-09-2000, without taking such steps as may be recommended by the committee to prevent floods and submersion due to the excess drain water of Yenamaduru drain is highly a thoughtless, mala fide, arbitrary and political stunt, detrimental to the interests of all the public at large especially Rice consumers of the country who depend upon the Rice produced in the delta region of the West Godavari District and also the paddy producers who are the ayacutdars of the delta region having lands in the various villages stated in para two of this affidavit, that it violates the Fundamental Rights and the principles of natural justice and consequently to direct the respondents not to construct any such new aqueduct without receiving the Expert Report and without considering the merits and demerits, and without taking the necessary remedial or preventive measures that are necessary to prevent the frequent floods and submersion of the lands.

Counsel for the Petitioner: Mr.D.RAMALINGA SWAMY

Counsel for the Respondents: G.P. FOR IRRIGATION &

COMMAND AREA DEVEVELOPMENT

The Court made the following :

COMMON ORDER: (per the Hon'ble the Chief Justice)

These writ petitions have been filed by way of public interest litigation questioning the action of the respondents in undertaking to construct new aqueduct at Nandamuru village, West Godavari District, with seven sluices with a higher discharge capacity of about 22,000 cusecs of Yerrakalva water in place of the old existing aqueduct with lesser capacity of 8000 cusecs. The petitioners' apprehensions are that any increase in the capacity would result in damage to their lands and crops in the down deltas.

On notices being issued, affidavit in reply was filed on 10.11.2000 by M.Venkateswara Rao, Project Administrator & Superintending Engineer, Construction Circle, Dowlaiswaram stating that Yerrakalava is a hill stream taking its origin near Dammapeta, Khammam District and runs for a length of 165 K.M. before it joins Upputeru, which ultimately joins the sea. The Godavari-Eluru Canal crosses

the Yerra Kalava at 12.870 K.M. (Canal Chainage) near Nandamarru village in West Godavari District. The existing old Aqueduct was constructed in the year 1875 on Eluru Canal to cross the Yerrakalva at Nandamuru Village. It has 4 vents of size 12.19 x 2.44 Mts., with a designed discharge of about 8000 Cusecs. Subsequently, a Reservoir has been formed by constructing a Dam at Konguvariduem Village in West Godavari District, across Yerrakalava in the year 1990. This is a multi-purpose Project intended for both irrigation as well as Flood Control. This project would help in controlling the floods to a large extent by moderating the floods by way of regulated releases.

It is further stated that the new aqueduct with 7 vents of size 15.20 x 2.86 Mtrs., with discharging capacity of 20,251 Cusecs is under construction to replace the existing 125 years old aqueduct.

Respondent has stated that the apprehensions of the petitioners that there will be discharge of 22000 cusecs to the aqueduct and would affect about 2,50,000 acres of land in the villages of Delta area is baseless. The Superintending Engineer states that the aqueduct is not a regulating structure, whereby the flows can be increased or decreased into lower down reaches. No shutters are proposed to the aqueduct. The Aqueduct is a structure to run the Canal for crossing a river/stream or water course, just as a bridge, which will be constructed across a river/storm to allow the traffic to pass over. In the case of aqueduct, the canal runs above the river, while the river/stream flows under the aqueduct.

Reference has been made to the Indian Standard Code as regards aqueduct, which is a cross drainage work, and detailed reasons have been assigned about mis-apprehension on the part of the petitioners to assume that by construction of aqueduct with higher designed discharge, that floods of a higher magnitude will be allowed to flow lower down. The reason assigned is that should the floods of higher magnitude result due to heavy rainfalls in the catchment areas, the flood waters

would naturally flow lower down either by breaching the canal, banks or overflowing the structure or by damaging the aqueduct. As such, no control over the flows to the lower down reaches is possible with the new aqueduct or even with the existing old aqueduct with a lesser designed discharge.

Reply further details about the survey conducted for the last 20 years during floods at Duvva Regulatory across Yanamadurru drain stating that while the old aqueduct is in place, higher flood discharge passed lower down cusecs. The aqueduct under construction is therefore designed for the maximum flow discharge observed.

The importance of aqueduct in question and the likely effect in case it is not constructed have been stated saying that the Nandamurru Aqueduct is an important structure, where the Godavari-Eluru Canal runs to irrigate 86069 Acres in Godavari Western Delta. Any failure of the aqueduct or breaches to the canal banks due to inadequate discharging capacity of the aqueduct would jeopardize the interests of Ayacut under Eluru Canal as well as the Ayacut in the lower down reaches of referred to by the petitioners in the Deltaic region. It would be a catastrophe should such a structure fail and it would cause enormous loss.

Reference has also been made to the Expert Committee constituted to study the drainage problem of West Godavari and Krishna District, of which the terms included amongst others to study the problems of Yerra Kaluva and Yanamadurru drains in West Godavari District, Budameru and Gunderu in Krishna District and to identify the works required to be undertaken.

In nutshell, the respondents in their affidavit have highlighted that construction of new aqueduct is very essential and postponement of construction is not advisable. Moreover, the existing aqueduct, which is 125 years old, requires immediate replacement.

Petitioners have filed reply to the counter affidavit objecting to the various stands taken by the respondents. In nutshell, the apprehensions of the petitioner are that construction if completed with increased discharge capacity will result in extensive damage.

During the course of arguments, we questioned the learned counsel for the petitioners as to the basis of their apprehensions, which they were unable to explain. We asked about the technical qualifications of the petitioners and they stated except that petitioners are ryots, they have no technical knowledge to apprehend that increased discharge will definitely adversely affect them.

We have referred in extenso the reply affidavit of the respondent which is based upon historic study. Expert Committee has been constituted for a different purpose. But, the reasons assigned by the respondents were the aqueduct had been constructed more than 125 years back and it requires immediate replacement and if it is not done, damage likely to be caused would be far extensive. We are of the view that in such like matters, there should not be any interference at the behest of those who come to the Court merely on some apprehensions without any foundations. Learned counsel for the petitioners wanted to rely upon a document which is not a complete document, but, some extracts from the reports not filed in Court on an affidavit, and there is no evidentiary value for such type of material.

We see no irregularity or illegality in the action of the respondents in taking decision for replacing the old aqueduct with new one stating that structures to be designed to the higher flood discharges have to be as per Indian Standard Code so that structures would withstand from high floods. As such, we find no merit in the writ petitions and they are accordingly dismissed. No costs.

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(DEVINDER GUPTA, C.J.)

Date: 24th September 2004.

_____ (B.SESHASAYANA REDDY, J.)

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To

1. The Secretary, Irrigation Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
2.The Chief Engineer, Irrigation Department, Erramanzil, Hyderabad.
3.The Superintending Engineer, Irrigation Circle, Eluru, West Godavari District.

4.The Executive Engineer, Irrigation Department, Settipet, Nidadavole Mandal, West Godavari District.
5.The Superintending Engineer (Constructions), Irrigation Department, Dowleiswaram, East Godavari District.
6.The Executive Engineer (Constructions), Irrigation Department, Tadepalligudem, West Godavari District.

7.Two C.Cs. to Govt. Pleader for Irrigation & CAD, High Court Bldgs.,

Hyderabad (OUT).

8. Two C.D. copies.